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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 1024

CIMARRON COAL CORPORATION, - Petitioner,

versus

DISTRICT No. 23, UNITED MINE WORKERS OF AMERICA;
LOCAL UNION No. 1076, LOCAL UNION No. 1263, LOCAL UNION No. 1467, LOCAL UNION No. 9316, LOCAL UNION No. 9205, LOCAL UNION No. 9653, All Local Unions of DISTRICT No. 23, UNITED MINE WORKERS OF AMERICA;
ALVIE LEROY PATTERSON;
WILLIAM CORNETTE;
ARTHUR COPE;
T. H. HUMPHREY, JR.;
KENNETH OSBURN; and
CECIL DUVAL, - - - - - Respondents.

On Writ of Certiorari to the Untied States Court of Appeals for the Sixth Circuit.

APPENDIX.

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Paducah, Kentucky 42001,

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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 2326

CIMARRON COAL CORPORATION, - - - - - *Plaintiff,*

v.

DISTRICT 23, UNITED MINE WORKERS,
LOCAL 1076, ET AL., - - - - - - *Defendants.*

FINDINGS OF THE COURT.
(Transcript, pages 156-162)

By the Court: The Court gives the following opinion; the Court believes that this case must be viewed in the posture of one seeking the issuance of an injunction in a labor dispute and the employer-employee relationship is not controlling with regard to whether or not a labor dispute exists between the plaintiffs and the defendants of the action. (See Lauf vs Shinner & Co., 303 U. S. 323.)

I might say at this point, gentlemen, that a copy of this will be immediately available to you—we will photostat it.

Accordingly, the Court is legally compelled to make findings under Section 107:

(1) That substantial and irreparable injury to the plaintiff's property will follow;

(2) That the plaintiff will suffer greater injury by a denial of the relief than the injury inflicts upon the defendants by granting of the relief, and;

(3) That the plaintiff has no adequate remedy at law.

Now, as to those three grounds, I have no great problem. Substantial and irreparable injury has been proven existent

and of course, as long as the mine is not in operation it would, of necessity, continue.

The plaintiff would suffer greater injury by denial than would the defendants by the granting of the relief due to the existence of operating expenses and loss of profit on the part of the plaintiff when coupled against the fact that the defendants have never had a union contract with the Cimarron Coal Company in the first instance.

The plaintiff is easily found to have no adequate remedy at law for there is no remedy that would immediately allow him to begin to make his profits at law, thus (1), (2) and (3) give this Court no problem, however, there is a fourth statutory requirement that I must find unlawful acts have been threatened and have been or will be committed and will continue to be committed unless they are restrained by me.

The only really unlawful acts that appear from the evidence adduced here today are the congregation by the defendants in such numbers as might cause an ordinarily reasonably prudent employee of the plaintiff, in view of the past history of the defendants' organizational activities, to have some sort of reticence to attempt to walk through the presence of the defendants in large numbers when the defendants are requesting "Respect for our picket lines," and the further act that it does appear that at least on one occasion vehicles containing the plaintiffs' employees trying to enter the mine area were required somehow or another to turn around in the road although the plaintiff employee testifying about this occurrence is unable to identify the persons allegedly who referred to his ancestory and allegedly made some type of threat.

Still, the defendant has not introduced a single witness who was present at the time of this alleged occurrence who denies that in actual fact vehicles containing plaintiff's employees at least two in number, were not compelled to turn around in the road and depart.

Further, it can be reasonably presumed that the thirteen employees voting no in the October 10th election that Mr. Patterson held can be presumed to have desired to enter this working place at this time absent coercion or intimidation.

This constitutes, gentlemen, a summary in my judgment, of about all of the unlawful acts which go to prevent the legal rights of the plaintiff's employees to engage in their gainful employment if they so desired.

Moving now to the next troublesome problem, and that is No. 5 under Section 107, requiring a finding that the public officers were unwilling or unable to furnish adequate protection, I do find that the sheriff and the State Police were called on at least three occasions and entered the general vicinity.

It appears that they cleared the roadway, however, even when they were in the general vicinity the plaintiff's proof shows that two vehicles of employees were turned back. This is indicative, to me, that the public officials made no real meaningful response insofar as escorting or offering to escort or insuring protection to any plaintiff employee who wished to drive between the parked cars and the large number of defendants' associates there gathered.

It is not what happens when the law enforcement officers are actually present, as the defense counsel seems to rely; if the freedom of action of the plaintiffs' employees is at other times prohibited by the defendants, and my reaction to this case, gentlemen, is that it is one viewed by me to be extremely marginal in chinning the bar of legal requirements of Section 107 when viewed in the light of occurrences there weighed in the balance of the unquestioned right of the mine workers to peacefully assemble and to espouse the cause of their union fraternity.

For this reason, of course, I feel compelled to deny the temporary injunction in the form tendered to me by the plaintiff as it appears far too broad in scope. I will, however, grant an order restraining the defendants in their

activities at the plaintiff's mine from massing in large groups or from using or employing more than four persons at any one time in the act of picketing at any single entrance to the plaintiff's mine in Hopkins County, or said another way, of using more than a total of twelve persons at any given time in the picketing of the three entrances to the mine proper, and require that no more than two of said pickets at any one place be standing at a distance of closer than five feet to one another and that their picketing activities not be conducted in such a manner as to block or impede the use of the entrances and the exits to said mine and that they be possessed of placards indicating themselves to be pickets and the purpose of their picketing.

I enjoin them from the stopping of any vehicles or attempting to ingress or egress from this mine property, which includes the employees of the plaintiff or any person, customer or a train attempting to move to or for the property.

Likewise, the order shall enjoin any assault or harassment of any employee of the plaintiff or any member of his family on or about the public streets or at private homes of such employees.

Now, gentlemen, by this very limited order, an order which I am confident the defendants can clearly obey without any undue limitation being placed upon their organizational influence if it truly, in fact, genuinely exists and the plaintiff's employees do, in fact, wish to become members of the defendants' union; the Court feels that the union, as Mr. Patterson expressed it, really has no objection to the employees entering their place of employment if they wish to, provided they are informed en route that the union wishes to organize this coal mining operation.

The granting of a preliminary injunction couched in the form of the foregoing language by me shall be conditioned upon the giving of security by the plaintiff in the sum of $5,000.00. The injunction will be prepared by plaintiff's

counsel forthwith and submitted to the Court in conformity with Subsection (D) of Rule 65 and shall be binding upon the parties to the action, their officers, agents, servants and employees and attorneys and upon those in active concert or participation with them who receive notice of the order by personal service or otherwise.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

Civil Action No. 2326

CIMARRON COAL CORPORATION, - - - - - *Plaintiff,*

v.

DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA; LOCAL UNION NO. 1076, LOCAL UNION NO. 1263, LOCAL UNION NO. 1467, LOCAL UNION NO. 8316, LOCAL UNION NO. 9205, LOCAL UNION NO. 9653, all Local Unions of District No. 23, UNITED MINE WORKERS OF AMERICA; ALVIE LEROY PATTERSON; WILLIAM CORNETTE; ARTHUR COPE; T. H. HUMPHREY, JR.; KENNETH OSBURN; and CECIL DUVAL, - - - *Defendants.*

PRELIMINARY INJUNCTION.

This cause coming on to be heard on the motion of the plaintiff for a preliminary injunction, said motion having been set for hearing on this date, with due notice to the defendants, and the Court having considered the verified complaint and amended complaint and the affidavit of the President of Cimarron Coal Corporation, plaintiff herein, and evidence having been heard in open court with opportunity for cross-examination in support of the allegations of said verified complaint and testimony in objection thereto, and having considered the arguments of counsel and it being fully advised of the premises, finds:

(a) That the individual defendants named in the caption are officers or members of one or more of the local

unions named in the complaint and listed in the caption; that commencing on the 10th day of October, 1968 and continuing until this date, the defendants, individually and collectively, acting alone or in concert with other unknown persons, members of one or more of said local unions, have engaged in picketing plaintiff's Cimarron mine located in Hopkins County, Kentucky; that said picketing was accompanied by the massing of numerous individuals associated with and members of the defendants in such numbers as to prevent ingress to and egress from said mine and to stop the operation thereof; that such mass picketing and other picketing was intended to and did restrain and prevent plaintiff's employees and customers and the railroad serving said mine from having ingress to and egress from said mine, and from shipping in interstate commerce coal produced in said mine; that by reason of such unlawful picketing, plaintiff's employees have been prevented from entering or leaving plaintiff's mine and have been unable to work in said mine, as a result of which the mine has not been operated during the period beginning October 10, 1968 and continuing to the present time.

(b) Such picketing has caused substantial daily loss and damage and has caused plaintiff's business to fall off ____%. That the injury so caused is substantial and irreparable.

(c) That as to such unlawful picketing and mass picketing, if permitted to continue, greater injury will be inflicted upon the complainant by the denial of the relief sought than will be inflicted upon the defendants by the granting of relief.

(d) That the complainant has no adequate remedy at law.

(e) That public officers charged with the duty to protect complainant's property have been called upon to furnish such protection and are unable or unwilling to furnish adequate protection.

(f) That the persons who have been engaged in such picketing, including the defendants named in the caption, are not employees of the plaintiff and no employees of plaintiff are represented by the individuals or the local unions named as defendants.

(g) That plaintiff has no dispute of any kind with said pickets or their local unions, or with any person associated with them, and by reason thereof, plaintiff is powerless to take any action which would result in a termination of said unlawful, intimating and coercive mass picketing, and that plaintiff has not failed to make every reasonable effort to terminate said picketing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that pending final order of this Court, the defendants named in the caption and persons in active concert or participation with them be and they are hereby enjoined and restrained from restraining defendants in their activity at plaintiff's mine from massing in large groups or using or employing more than 4 persons at any one time in the act of picketing at any single entrance to the plaintiff's mine in Hopkins County, Kentucky; and of using more than a total of 12 persons at any given time in the picketing of the 3 entrances to the mine properties; and requiring that no more than 2 of said pickets at any one place may be standing within a distance of 5 feet from one another; and that their picketing activity not be conducted in such a manner as to block nor impede the use of entrances and exits to said mine; and that they be possessed of placards indicating themselves to be pickets and their purpose for such picketing; and enjoining them from the stopping of any vehicle attempting to ingress and egress onto the mine property, which includes vehicles of the employees of plaintiff or any person or customer, or train attempting to move to and from the plaintiff's mine property. Likewise the order shall enjoin any assault or harrassment upon any employee of plaintiff or

any member of his family on or about the public streets or private homes of such employees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this order shall be effective upon the execution by the plaintiff of bond with corporate surety in the penalty of $5,000.00 conditioned upon the payment of all costs and damages that may be found to be due the defendants from the plaintiff in the event that it shall be finally determined that this preliminary injunction should not have been granted or should be set aside.

Dated this 25th day of October, 1968.

(s) JAMES F. GORDON,
United States District Judge.

4:40 P. M.
10/25/68

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

Civil Action No. 2326

CIMARRON COAL CORPORATION, - - - - - *Plaintiff,*

v.

DISTRICT NO. 23; LOCAL UNION NO. 1076; LOCAL UNION NO. 1263; LOCAL UNION NO. 1467; LOCAL UNION NO. 8316; LOCAL UNION NO. 9205; LOCAL UNION NO. 9653; ALVIE LEROY PATTERSON; WILLIAM CORNETTE; ARTHUR COPE; T. H. HUMPHREY, JR.; KENNETH OSBURN; and CECIL DUVAL, - - - *Defendants.*

ORDER.

The Court being advised by counsel for the parties hereto that on a trial of the merits for a permanent injunction herein, neither party to the action would have additional proof to offer, IT IS ACCORDINGLY ORDERED that the hearing on the preliminary injunction held before this Court on Friday, October 25, 1968, be and the same is hereby considered by the Court to have been a trial on the merits of this action, and the injunction granted by the Court at the conclusion of said hearing aforesaid be and the same is hereby made permanent, and accordingly the time for the appeal of this Court's order begins to run upon the execution of the instant order by the Court.

(s) JAMES F. GORDON,
United States District Judge.

October 28, 1968.
Copies to all counsel of record.

No. 19,266

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CIMARRON COAL CORPORATION, - - *Plaintiff-Appellee,*

v.

DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA, ET AL., - - - *Defendants-Appellants.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY.

OPINION—Decided and Filed October 2, 1969.

Before: EDWARDS and CELEBREZZE, Circuit Judges, and HOGAN, District Judge.*

EDWARDS, Circuit Judge. This is an appeal from an injunction issued in a labor dispute by the United States District Court for the Western District of Kentucky. Appellant, United Mine Workers, contends that sections 4 and 7 of the Norris-LaGuardia Act (29 U.S.C. §§ 101-115 (1964)) deprived the District Court of jurisdiction to enter the injunction complained of. Appellee, Cimarron Coal Corporation, contends that the United Mine Workers mass picketing of its mine constituted "violence" within the meaning of section 4 of the Norris-LaGuardia Act and that the conditions of section 7 (including subparagraph (e)

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*Honorable Timothy S. Hogan, United States District Judge for the Southern District of Ohio, sitting by designation.

concerning a breakdown of local law enforcement) of that Act had also been met.

Section 1 of the Norris-LaGuardia Act provides:

> "No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." 29 U.S.C. § 101 (1964).

We approach the issues of this case with this statutory mandate in mind.

The facts show that Cimarron Coal Corporation operated a non-union mine in Hopkins County, Kentucky, employing approximately 30 miners. In October of 1968, the United Mine Workers were striking mines in Hopkins County where they had had bargaining rights. They had never had a contract with Cimarron nor does this record make any showing of any union membership. Beginning on October 10 and continuing until October 25, 1968, when this injunction was entered, the United Mine Workers undertook to organize Cimarron Coal Corporation by the expedient of appearing in front of the plant gates with 75 to 100 pickets and picket signs.

Cimarron Coal thereupon wrote the State Police and the local sheriff asking for protection. The sheriff and some state police did appear and some of the employees did go in to work. From this record it would appear that there was something less than a complete mobilization of law enforcement. There was, however no failure on the part of law enforcement officials to respond, no testimony from any law enforcement official offered before the District

Judge pertaining to any breakdown of local or state law enforcement, and no property damage or physical assault upon anyone.

The thrust of Cimarron's case for federal injunctive relief is that the mass picketing constituted "violence" within the meaning of section 4 of Norris-LaGuardia and that the limited response of local and state police met the conditions of section 7(e) of that Act.[1]

Since we believe that the conditions set forth in section 7(e) were not met and that because of this the court had no jurisdiction to enter the injunction, we find no need to consider or decide the section 4 issue.

Section 7 of the Norris-LaGuardia Act provides:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—
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> * * * * * * * *
>
> "(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C. § 107 (1964).

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[1]Appellee Cimarron also argued that in this case, where there was diversity of Citizenship, Kentucky law applied and that Kentucky law authorized injunctive relief to enjoin even peaceful picketing when circumstances indicate that its purpose is unlawful, citing *Blue Boar Cafeteria Co.* v. *Hotel Employees, Local 181*, 254 S. W. 2d 335 (Ky. Ct. App. 1952), *cert. denied*, 346 U. S. 834 (1953). Since, however, the Norris-LaGuardia Act is the decisive standard as to federal jurisdiction (See *Lauf* v. *E. G. Shinner & Co.*, 303 U. S. 323 (1938)), we have no need to determine this issue.

Bearing on these issues, the District Judge said:

> "Moving now to the next troublesome problem, and that is No. 5 under Section 107, requiring a finding that the public officers were unwilling or unable to furnish adequate protection, I do find that the sheriff and the State Police were called on at least three occasions and entered the general vicinity.
>
> "It appears that they cleared the roadway, however, even when they were in the general vicinity the plaintiff's proof shows that two vehicles of employees were turned back. This is indicative, to me, that the public officials made no real meaningful response insofar as escorting or offering to escort or insuring protection to any plaintiff employee who wished to drive between the parked cars and the large number of defendants' associates there gathered.
>
> "It is not what happens when the law enforcement officers are actually present, as the defense counsel seems to rely; if the freedom of action of the plaintiff's employees is at other time prohibited by the defendants. . . ."

The District Judge also added:

> "[M]y reaction to this case, gentlemen, is that it is one viewed by me to be extremely marginal in chinning the bar of legal requirements of Section 107 when viewed in the light of occurrences there weighed in the balance of the unquestioned right of the mine workers to peacefully assemble and to espouse the cause of their union fraternity."

Since we believe that the chin did not get over the bar, we reverse and vacate the injunction.

We cannot read the District Judge's quoted words as a finding that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C. § 107(e) (1964). Indeed, if his holding was subject to that construction, we would have to say that this record afforded no support for it and that it was clearly erroneous.

We think this record indicates only pro forma requests by plaintiff-appellee for protection and that it fails to demonstrate either inability or unwillingness of state law enforcement to respond.

The history of the Norris-LaGuardia Act offers no doubt that Congress meant to limit within strictly defined bounds the jurisdiction of the federal courts to issue injunctions in labor disputes. A unanimous Supreme Court described the Congressional intent in these words:

> "The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility to 'government by injunction' had become the rallying slogan of many and varied groups. Indeed, as early as 1914 Congress had responded to a widespread public demand that the Sherman Act be amended, and had passed the Clayton Act, itself designed to limit the jurisdiction of federal courts to issue injunctions in cases involving labor disputes. But the proponents of the Norris-LaGuardia Act felt that the jurisdictional limitations of the Clayton Act had been largely nullified by judicial decision. Thus, the Senate Judiciary Committee, reporting the Norris-LaGuardia Act, said: 'That there have been abuses of judicial power in granting injunctions in labor disputes is hardly open to discussion. The use of the injunction in such disputes has been growing by leaps and bounds. . . . For ex-

ample, approximately 300 were issued in connection with the railway shopmen's strike of 1922, . . .'[16] And on the same subject the House Judiciary Committee said: 'These are the same character of acts which Congress in section 20 of the Clayton Act of October 15, 1914, sought to restrict from the operation of injunctions, but because of the interpretations placed by the courts on this section of the Clayton Act, the restrictions as contained therein have become more or less valueless to labor, and this section is intended by more specific language to overcome the qualifying effects of the decisions of the courts in this respect.'[17]

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[16]S. Rep. No. 163, 72nd Cong., 1st Sess., p. 8.
[17]H. Rep. No. 669, *supra*, pp. 7, 8."

Drivers' Union Local 753 v. *Lake Valley Co.*, 311 U. S. 91, 102 (1940).

In the leading case upon the subject the United States Supreme Court set this standard for interpretation of the Norris-LaGuardia Act:

"That Act's language is broad. The language is broad because Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have been adverted to in a number of prior opinions of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts.[7]

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[7]See e.g., *United States* v. *Hutcheson*, 312 U. S. 219; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U. S. 91; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Lauf* v. *Shinner & Co.*, 303 U. S. 323. And see *Allen Bradley Co.* v. *Local Union No. 3, IBEW.*, 325 U. S. 797, 805."

Marine Cooks v. *Panama S.S. Co.*, 362 U. S. 365, 367-70 & n. 7 (1960).

See also *Telegraphers* v. *Chicago & North Western Ry.*, 362 U. S. 330 (1960); *Lauf* v. *E. G. Shinner & Co.*, 303 U. S. 323 (1938).

One part of the purpose of Congress in adopting the Norris-LaGuardia Act undoubtedly was to leave in the hands of state and local authorities those problems of public order which they were capable of handling. Concerning the section of the Norris-LaGuardia Act (§ 107(e)) which we have held to control this case, the House Judiciary Committee (in language which we consider peculiarly apt here) said:

> "The last provision is considered desirable, because it often happens that complainants rush into a Federal court and obtain an injunction the enforcement of which requires the court to consider and punish acts which are and ought to be, under our system of government, cognizable in the local tribunals. Our Federal courts already are congested with cases ordinarily cognizable in the local police courts, . . ." H. R. Rep. No. 669, 72d Cong., 1st Sess., 9 (1932).

The injunction is vacated and the case is remanded for dismissal of the complaint.

No. 19,266

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CIMARRON COAL CORPORATION, - - *Plaintiff-Appellee,*

v.

DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA, ET AL., - - - - *Defendants-Appellants.*

ORDER—Filed November 18, 1969.

Before: EDWARDS and CELEBREZZE, Circuit Judges, HOGAN, District Judge.*

This court's opinion in the above-styled case was founded entirely upon the "strict conformity" (29 U.S.C. § 101 (1964)) required by Congress in relation to Section 7 of the Norris-LaGuardia Act providing in part:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter . . . except after findings of fact by the court, to the effect—
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> * * * * * * * * *
>
> "(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C. § 107 (1964).

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*Honorable Timothy S. Hogan, United States District Judge for the Southern District of Ohio, sitting by designation.

It may not be read as "upholding" violation of any law of the State of Kentucky which its law enforcement agencies are charged with enforcing.

The nature of the injunction issued is irrelevant where the court has no jurisdiction to issue any at all. But it should be noted that the court was made fully aware of the error in the Appendix concerning the terms of the injunction as finally entered by the District Judge and read and considered the entire transcript of the hearing before him before deciding this case.

The motion for rehearing is denied.

Entered by order of the Court.

(s) CARL W. REUSS,
Clerk.